

trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. In addition, the Commission believes the proposed rule change is consistent with Section 11A(a)(1)(C) of the Act<sup>19</sup> in that it seeks to assure economically efficient execution of securities transactions.

The Commission recognizes that technical or systems issues may occur, and believes that CBOE Rule 6.6A, in allowing CBOE to cancel or release orders affected by technical or systems issues, should provide a reasonably efficient means for CBOE to handle such orders, and appears reasonably designed to permit CBOE to maintain fair and orderly markets.<sup>20</sup>

The Commission also believes that allowing the Exchange to resolve error positions through the use of error accounts maintained by its routing brokers or the Exchange itself pursuant to the procedures set forth in the rule, and as described above, is consistent with the Act. The Commission notes that the rule establishes criteria for determining which positions are error positions to which the rule applies, and the procedures for the handling of such positions. In particular, the Commission notes that CBOE Rule 6.14C only applies to error positions that result from the Exchange's routing service, and that such positions shall be liquidated by the routing broker or the Exchange, as applicable, as soon as practicable.<sup>21</sup> In this regard, the Commission believes that the new rule appears reasonably designed to further just and equitable principles of trade and the protection of investors and the public interest, and to help prevent unfair discrimination, in that it should help assure the handling

of error positions will be based on clear and objective criteria, and that the resolution of those positions will occur promptly through a transparent process.

The Commission is also concerned about the potential for misuse of confidential and proprietary information. The Commission notes that CBOE or a routing broker, as applicable, will establish and enforce policies and procedures reasonably designed to (1) adequately restrict the flow of confidential and proprietary information associated with the liquidation of the error positions, and (2) in the case of liquidations by a routing broker, prevent the use of information associated with other orders subject to the routing services when making determinations regarding the liquidation of error positions.<sup>22</sup> Furthermore, to the extent the Exchange uses an Exchange Error Account to liquidate error positions, the Exchange shall provide complete time and price discretion for the trading to liquidate error positions in an Exchange Error Account to a third-party broker-dealer and shall not attempt to exercise any influence or control over the timing or methods of such trading.<sup>23</sup> The Commission believes that these requirements should help mitigate the Commission's concerns. In particular, the Commission believes that these requirements should help assure that none of CBOE, its routing brokers, or any third-party broker-dealer is able to misuse confidential or proprietary information obtained in connection with the liquidation of error positions for its own benefit. The Commission also notes that routing brokers would be required to make and keep records associated with the liquidation of routing broker error positions<sup>24</sup> and CBOE would be required to make and keep records to document all determinations to treat positions as error positions under this Rule (whether or not an Exchange Error Account is used to liquidate such error positions), as well as records associated with the liquidation of Exchange Error Account error positions through a third-party broker-dealer.<sup>25</sup>

Finally, the Commission notes that the proposed procedures for canceling orders and the handling of error positions are consistent with procedures the Commission has approved for other exchanges.<sup>26</sup>

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>27</sup> that the proposed rule change (SR-CBOE-2012-108) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>28</sup>

**Kevin M. O'Neill**,  
Deputy Secretary.

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**BILLING CODE 8011-01-P**

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68582; File No. SR-Phlx-2012-146]

#### Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Strategy Caps

January 4, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup>, and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 21, 2012, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend rule text related to fee caps applicable to certain strategies on Multiply Listed Options in Section II, entitled "Equity Options Fees."<sup>3</sup>

The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaqomxphlx.cchwallstreet.com/>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

(SR-NASDAQ-2012-057); 66963 (May 10, 2012), 77 FR 28919 (May 16, 2012) (SR-NYSEArca-2012-22); 67010 (May 17, 2012), 77 FR 30564 (May 23, 2012) (SR-EDGX-2012-08); and 67011 (May 17, 2012), 77 FR 30562 (May 23, 2012) (SR-EDGA-2012-09).

<sup>27</sup> 15 U.S.C. 78s(b)(2).

<sup>28</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Section II Equity Options fees include options overlying equities, ETFs, ETNs and indexes which are Multiply Listed.

<sup>19</sup> 15 U.S.C. 78k-1(a)(1)(C).

<sup>20</sup> The Commission notes that CBOE states it believes that allowing the Exchange to cancel or release orders under such circumstances would allow the Exchange to maintain fair and orderly markets, and that CBOE Rule 6.14C is designed ensure full trade certainty for market participants and avoid disrupting the clearance and settlement process. See Notice, 77 FR at 70521. The Commission also notes that CBOE states that a decision to cancel or release orders due to a technical or systems issue is not equivalent to the Exchange declaring self-help against a routing destination pursuant to Rule 611 of Regulation NMS. See 17 CFR 242.611(b). See also Notice, 77 FR at 70519 n.9.

<sup>21</sup> See CBOE Rule 6.14C.

<sup>22</sup> See CBOE Rules 6.14C(d)(i); 6.14C(e)(ii).

<sup>23</sup> See CBOE Rule 6.14C(e)(i).

<sup>24</sup> See CBOE Rule 6.14C(d)(ii).

<sup>25</sup> See CBOE Rule 6.14C(e)(iii).

<sup>26</sup> See, e.g., Securities Exchange Act Release Nos. 67281 (June 27, 2012), 77 FR 39543 (July 3, 2012)

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

The purpose of the proposed rule change is to correct rule text inadvertently included in a recent proposed rule change related to fee caps on dividend,<sup>4</sup> merger,<sup>5</sup> short stock interest<sup>6</sup> and reversal<sup>7</sup> and conversion<sup>8</sup> strategies in order to clarify contradictory language within the rule text.

The Exchange recently filed a rule change which applied fee caps on various strategies in Section II of the Pricing Schedule.<sup>9</sup>

Among other amendments, this rule change increased the cap for dividend, merger and short stock interest strategies from \$1,000 to \$1,250 provided the strategy is executed on the same trading day in the same options class when such members are trading in their own proprietary account. Further, the Exchange adopted a cap for floor options transaction charges for reversal

<sup>4</sup> A dividend strategy is defined as transactions done to achieve a dividend arbitrage involving the purchase, sale and exercise of in-the-money options of the same class, executed the first business day prior to the date on which the underlying stock goes ex-dividend.

<sup>5</sup> A merger strategy is defined as transactions done to achieve a merger arbitrage involving the purchase, sale and exercise of options of the same class and expiration date, executed the first business day prior to the date on which shareholders of record are required to elect their respective form of consideration, *i.e.*, cash or stock.

<sup>6</sup> A short stock interest strategy is defined as transactions done to achieve a short stock interest arbitrage involving the purchase, sale and exercise of in-the-money options of the same class.

<sup>7</sup> Reversals are established by combining a short stock position with a short put and a long call position that shares the same strike and expiration.

<sup>8</sup> Conversions are established by combining a long position in the underlying stock with a long put and a short call position that share the same strike and expiration.

<sup>9</sup> See Securities Exchange Act Release No. 68406 (December 11, 2012), 77 FR 74715 (December 17, 2012) (SR-Phlx-2012-138).

and conversion strategies of \$750, provided the reversal and conversion strategy is executed on the same trading day in the same options class when such members are trading in their own proprietary account, similar to dividend, merger and short stock interest strategies.<sup>10</sup>

The rule text was amended to state, "Specialist, Market Maker, Professional, Firm and Broker-Dealer floor option transaction charges in Multiply Listed Options will be capped at \$1,250 *per month* for dividend, merger and short stock interest strategies executed on the same trading day in the same options class, and option transaction charges in Multiply Listed Options will be capped at \$750 *per month* for reversal and conversion strategies executed on the same trading day in the same options class when such members are trading in their own proprietary accounts." [emphases added] The Exchange noted that the strategies need to be executed on the same trading day. Strategy caps offered by the Exchange are and have always been on a per symbol, per day basis. The insertion of the text "per month" was inadvertent. The Exchange proposes to delete the "per month" text which is inaccurate and contradicts other text which states the strategies need to be executed on the same trading day. The Exchange intended the strategy caps of \$1,250 and \$750 to be per symbol, per day. The Exchange is proposing to remove the text "per month" to correct the Pricing Schedule at Section II and clarify the caps are for the same trading day as specified in the rule text.

The Exchange does not believe that this error caused confusion because the Exchange issued an Options Trader Alert at the time the filing became effective to notify members of the cap. The alert was clear that the caps were per day. In addition, the Exchange has spoken to members and does not believe there is any confusion. The purpose of this filing is to correct the Pricing Schedule by removing the words "per month" to make clear the caps are per day.

<sup>10</sup> The Exchange also increased the cap for floor equity options transaction charges for dividend, merger and short stock interest strategies combined from the greater of \$10,000 per member or \$25,000 per member organization per month to simply \$35,000 per member organization per month provided that such members are trading in their own proprietary account. The Exchange proposed to apply this cap of \$35,000 per member organization per month to reversal and conversion strategies as well and term the cap as the "Monthly Strategy Cap." See Securities Exchange Act Release No. 68406 (December 11, 2012), 77 FR 74715 (December 17, 2012) (SR-Phlx-2012-138).

#### 2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act<sup>11</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>12</sup> in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

The Exchange's proposal to amend the rule text relating to strategies is reasonable because the words "per month" and "on the same trading day" are at odds. The Exchange's proposal to remove the words "per month" should clarify the application of the fee caps related to strategies.

The Exchange's proposal to amend the rule text relating to strategies is equitable and not unfairly discriminatory because the Exchange would apply the fee caps in a similar manner to all market participants. All market participants are entitled to the caps on a per day, per symbol basis.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange's proposal is to correct rule text which contains contradictory language. The Exchange believes this amendment would provide clarity with respect to the application of strategy caps and would benefit market participants. The Exchange does not believe that there is a misunderstanding among market participants that the strategy caps are per day.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.<sup>13</sup> At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors,

<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(4).

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2012-146 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2012-146. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2012-146, and should be submitted on or before January 31, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68580; File No. SR-NYSE-2012-79]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Its Price List To Adopt a Trading License Fee for Calendar Year 2013

January 4, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on December 21, 2012, New York Stock Exchange LLC (the "Exchange" or "NYSE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Price List to adopt a trading license fee for calendar year 2013. The Exchange proposes to make the rule change operative on January 1, 2013. The text of the proposed rule change is available on the Exchange's Web site at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below.

<sup>14</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

#### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Exchange proposes to amend its Price List to adopt a trading license fee for calendar year 2013.

NYSE Rule 300(b) provides that, in each annual offering, up to 1366 trading licenses for the following calendar year will be sold annually at a price per trading license to be established each year by the Exchange pursuant to a rule filing submitted to the Securities and Exchange Commission ("Commission") and that the price per trading license will be published each year in the Exchange's price list. The Exchange proposes to leave the current trading license fees in place for 2013: \$40,000 for the first two licenses held by a member organization, and \$25,000 for each additional license. Fees will continue to be prorated for any portion of the year that a license may be outstanding. The proposed changes are not otherwise intended to address any other problem, and the Exchange is not aware of any significant problem that the affected market participants would have in complying with the proposed changes.

The Exchange proposes to make the rule change operative on January 1, 2013.

##### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>3</sup> in general, and Section 6(b)(4) of the Act,<sup>4</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange believes that the proposal constitutes an equitable allocation of fees, as all similarly situated member organizations will be subject to the same fee structure and access to the Exchange's market is offered on fair and non-discriminatory terms. The Exchange also believes that the trading license fee is reasonable because it is the same as it has been since June 2011.<sup>5</sup>

<sup>3</sup> 15 U.S.C. 78f(b).

<sup>4</sup> 15 U.S.C. 78f(b)(4).

<sup>5</sup> See Securities Exchange Act Release Nos. 64582 (June 2, 2011), 76 FR 33390 (June 8, 2011) (SR-NYSE-2011-23) and 66108 (January 5, 2012), 77 FR 1768 (January 11, 2012) (SR-NYSE-2011-71). The